

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

REDACTED

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:16-cr-179
)	
Lonnie Dale Spotted Bear,)	
)	
Defendant.)	

TRANSCRIPT OF SENTENCING

Taken at
United States Courthouse
Bismarck, North Dakota
December 20, 2017

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

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FOR THE UNITED STATES

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 2:34 p.m., Wednesday, December
4 20, 2017, in the United States Courthouse, Bismarck, North
5 Dakota. The following proceedings were had and made of record
6 in open court with counsel and the defendant present.)

7 - - - - -

8 THE COURT: We'll open the record in the case of
9 *United States of America versus Lonnie Spotted Bear*. Here on
10 behalf of the federal government is Assistant U.S. Attorney
11 Jonathan O'Konek. Representing the defendant here is Attorney
12 Bob Bolinske from Bismarck. Mr. Spotted Bear, how are you
13 today?

14 THE DEFENDANT: Fine. Thank you.

15 THE COURT: This is scheduled as a sentencing hearing
16 on multiple charges of aggravated and attempted aggravated
17 sexual abuse of a child. There was a trial last fall. There
18 was a jury verdict on September 14, 2017, in which the
19 defendant was found guilty of -- on four counts.

20 Before today I have reviewed the Presentence
21 Investigation Report a couple of times. I reviewed the
22 Government's Sentencing Memorandum and Sentencing Memorandum
23 Supplement. I reviewed a victim impact statement from Nxxxx
24 Hxxxxxx Exxxx. And I've gone back and reviewed all of my trial
25 notes pretty carefully.

1 Mr. Spotted Bear, were you given the opportunity to
2 review the Presentence Investigation Report?

3 THE DEFENDANT: Yes, I did, Your Honor.

02:36 4 THE COURT: And you visited with your attorney,
5 Mr. Bolinske, about that report and what it means for you?

6 THE DEFENDANT: Yes, he did, Your Honor.

7 THE COURT: Very well. Either counsel have any
8 objections to the facts set forth in the Presentence Report or
9 the sentencing guideline calculations?

02:36 10 MR. O'KONEK: No, Your Honor.

11 MR. BOLINSKE: I guess, Your Honor, I realize it's
12 kind of of no consequence, but Mr. Spotted Bear does disagree
13 with the characterizations and accusations from 40 years ago
14 that were not included at the trial, that are included in the
02:36 15 PSI.

16 And, secondly, the characterizations of the
17 obstruction of justice, he does and I do, frankly, disagree
18 with all of that, so it's of no consequence, but we do.

19 THE COURT: Well, those objections don't affect the
02:36 20 sentencing guidelines and the mandatory minimum penalties in
21 this case, so they're noted for the record. I don't feel I
22 need to make any specific factual findings on those matters
23 because, again, they don't impact the sentence to be imposed.

24 Are there witnesses that intend to testify here
02:37 25 today?

1 MR. O'KONEK: Yes, Your Honor. We have two
2 witnesses.

3 THE COURT: Do you have any witnesses, Mr. Bolinske?

4 MR. BOLINSKE: I do not, Your Honor, no.

02:37

5 THE COURT: Then the government may call the
6 witnesses that you have identified.

7 MR. O'KONEK: Yes, Your Honor. The United States
8 would call Mr. Brad Sanderson.

9 BRAD SANDERSON,

02:37

10 having been first duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. O'KONEK:

02:38

14 Q. Brad, I'm just going to start off by kind of going through
15 some of your factual -- or your background. So you're the
16 father of Mxxxx Sxxxxxxxxx?

17 A. Yep.

18 Q. And you testified at the September 2017 trial that we've
19 referenced in this case?

02:38

20 A. Yes.

21 Q. Now I want to ask you just a couple of basic questions.
22 How has Mr. Spotted Bear's conduct affected you and Mxxxx
23 specifically?

02:38

24 A. I guess to tell you the truth, it's -- it's not been easy.
25 I didn't want to be here, actually, you know, but Brayden

1 wanted me to come and speak --

2 Q. And who's --

3 A. -- for his sister.

4 Q. Who's Brayden?

5 A. My son.

6 Q. And he wanted you to come speak today?

7 A. Yeah. He's down in treatment in Arizona for chemical
8 dependency, or whatever you want to call it, and it's a dual
9 diagnosis for mental disorders, and stuff.

10 Q. And so after Brayden kind of had asked to you speak, what
11 did he want you to convey and what do you want to convey to the
12 Court about how this has affected you and Mxxxx?

13 A. You know, I guess I can only say, I guess everything that
14 I do is for my children. I love my children. And I didn't
15 believe Mxxxx at the beginning, and that really hurt her,
16 because I knew Lonnie as a second father. You know, that was
17 my second home, and it was hard to take.

18 But I had to separate my feelings and what -- what --
19 you know, how it hurt me to how it affected my daughter, you
20 know, and how it's going to affect the rest of her life. And
21 that's what -- that's what it's all about, is my children's
22 future, so I got to just come up here and say whatever it is
23 God wants me to say, I guess.

24 Q. And to your knowledge, how has it affected Mxxxx?

25 A. What affected her the most is when people didn't believe

02:40 1 her and she had to go to a family event, and how she felt that
2 she was alienated and no one believed her. And then she had to
3 take pictures and smile and act like nothing happened, I guess,
4 and that really hurt her, and she really started crying when
5 she said that, that she -- it's not her family anymore. It
6 hurts.

7 Q. And how has this affected, I guess, the extended family?

02:41 8 A. It was just disbelief at first, you know. It was -- just
9 the holidays ain't the same. You know, we used to go to
10 Grandma Vetta's and everybody would go there, and it's
11 separating -- it's separating us. It's -- some -- some people
12 believe it and some people don't, you know, and it's tearing --
13 it's tearing me apart. It's tearing Mxxxx apart, and it's --
14 you know, we just wish it wouldn't be happening, but in all
02:41 15 reality, it is what it is, you know.

16 And we -- we're not here to hate and blame and treat
17 each other bad. We're here to love, you know, and that's --
18 just need to move on. And, you know, I just would ask Lonnie,
19 you know, if this shit happened, man, just admit to it, you
02:41 20 know, get help or whatever you got to do, because I love you,
21 man.

22 Q. Do you have anything else you'd like to add, sir?

23 A. I love my children too. I love my children more, and I
24 ain't never going to not believe my girl again because of this.
02:42 25 So in a way I can thank you for bringing me closer to my kids

1 because that's what it's really about, is a future for my
2 children. And I'll never, ever not believe them again, not
3 hear what they have to say to me.

02:42 4 MR. O'KONEK: Thank you. I have no further
5 questions, Your Honor.

6 THE COURT: Any questions, Mr. Bolinske?

7 MR. BOLINSKE: I have no questions. Thank you.

8 THE COURT: All right. Thank you, sir. You may step
9 down.

02:42 10 MR. O'KONEK: And, Your Honor, the United States
11 would call Ivetta Spotted Bear as its final witness.

12 IVETTA SPOTTED BEAR,
13 having been first duly sworn, was examined and testified as
14 follows:

02:43 15 DIRECT EXAMINATION

16 BY MR. O'KONEK:

17 Q. Ivetta, I just have a couple of background questions. You
18 are the grandmother for Nxxxx Hxxxxxx Exxxx?

19 A. Yes, I am.

02:43 20 Q. And you previously had testified on September -- I believe
21 around 14th of this year in the trial of *U.S. v Spotted Bear*?

22 A. Yes.

23 Q. And I know this is difficult, but I'm going to ask, how
24 has this affected you? How has Mr. Spotted Bear's conduct
02:44 25 affected Nxxxx, to your knowledge, and you and your family?

1 A. Oh, it has just been -- ever since we very first were
2 informed of it, you know, it's -- it's been a nightmare, you
3 know, a real living nightmare of all of the things that we've
4 gone through.

02:44

5 Q. And specifically have you noticed any effects and changes
6 in Nxxxx?

02:44

7 A. Yes. And I do have a statement that I will -- and I'll
8 read part of that, but, you know, I would like to talk to
9 Lonnie directly, you know, and from the heart -- from my heart,
10 Lonnie. You know, the last time we really got to talk was the
11 morning we found out, and you were over for coffee that morning
12 with us. You know, we were so close. You know, you helped us
13 whenever we needed help, and I helped you whenever you needed
14 anything. You know, you knew you could count on us, and I knew
15 we could count on you for -- for everything, you know.

02:45

16 And I, you know, was -- I've never -- hate -- I've
17 never hated you. Hate has not been a part of -- I've never,
18 ever said, you know, that I hate him. I do hate what we had to
19 go through and what we've been through. But, you know, I've
20 always looked up to you. We were hurt and angry and felt so
21 betrayed, so betrayed because we trusted you. You know, you're
22 her godfather, and you were supposed to help us take care of
23 her and watch over her.

02:45

24 You know, and when we were first, you know, told that
25 the FBI wanted to talk to us -- when I went and asked Nxxxx,

02:46

02:46

1 when I went -- you know, I didn't go immediately. I finished
2 making supper, and then I went and asked Nxxxx if something had
3 happened. And when Nxxxx started crying and turned away and
4 wouldn't look at me and said yes, you know, I knew immediately
5 something had happened that should not have happened.

02:46

6 And at first she only -- she told me -- she only told
7 me twice. She said once when she was five and once when she
8 was nine, and -- you know, and I wanted to believe that so bad.
9 You know, and then after a few months when she came back and
10 said, you know, there were multiple times in there, you know,
11 in between those -- the five and the nine and how -- she told
12 me how she felt whenever you would come over, you know, Nxxxx,
13 how she -- she didn't -- you know, she would go to her room and
14 wouldn't come out of her room, you know, and how we didn't
15 realize what was going on.

02:47

16 Could I get some water? I'm sorry.

17 Q. And, ma'am, you had said that you had kind of a statement
18 that you'd written that you wanted to read?

02:47

19 A. Yes. And, you know, it's -- it is -- it's been so
20 difficult, you know, really difficult to get through this. But
21 this was the statement that I wrote to the Court. And, you
22 know, they talked about family, and I said since Lonnie is my
23 brother, we pretty much have the same family. Lonnie's wife
24 and sons are suffering immensely because they believe he's
25 innocent. Lonnie says he didn't do anything, and they totally

02:47

1 believe him.

2 Lonnie needs to man up and admit the girls are
3 telling the truth. His wife and sons believe he has been
4 unjustly -- unjustly tried and convicted because Lonnie
5 continues to deny what he's done. He needs to be strong and
6 accept responsibility for his actions and admit he needs help
7 for what he's -- for his problem he has.

8 Diana, my sister-in-law, has not been back in church
9 since the trial. Morley hasn't been able to go back to work.
10 Morley, Lonnie's son, hasn't been able to go back to work, and
11 he's taken extended leave from his job. They will continue to
12 be in limbo, suffering and unable to start the healing process
13 until Lonnie admits the girls are telling the truth.

14 You know, now I can move on to the impact that this
15 had on our family and our household. When my husband and I
16 first learned of the allegations that Nxxxx had been sexually
17 molested by Lonnie, we were shocked and absolutely devastated,
18 to say the least. We trusted him totally and completely with
19 Nxxxx. Lonnie was her godfather. He was the one person that
20 was supposed to help us watch out for her, protect her, and to
21 help keep her safe.

22 We were heartbroken. We could not believe he had
23 betrayed us like this. My husband cried because he thought he
24 failed in his job to protect her. I cried every day for about
25 two months straight. I just couldn't believe what we were

02:49

1 going through. It was a living nightmare. I was angry that my
2 brother was making my family go through this. There were no
3 words in my vocabulary to describe the emotional pain I felt.
4 My heart truly felt a deep pain in it. My stomach always felt
5 like it had a knot in it.

02:50

6 I felt sick. I just felt sick a lot of the times.
7 The mind becomes so consumed -- so consumed that you -- you're
8 thinking about this when you fall asleep at night. You wake up
9 during the night. This is all you're thinking about. First
10 thing when you wake up in the morning, it's all you're thinking
11 about.

12 I wish Sommer wouldn't be sitting back there smiling.
13 This is not funny.

02:50

14 I'm driving -- I'm driving around, but I'm not
15 sure --

16 Q. And, ma'am, I apologize, but if I could have you focus on
17 the -- on the statement. I know this is tough.

18 A. Okay.

19 Q. I'm sorry.

02:50

20 A. Well, she's sitting there, just sitting there smiling, so
21 it's --

22 Q. I know, ma'am.

02:50

23 A. It's hard for me. You know, I'm trying to talk to my
24 brother, and I see her just sitting back there smirking. You
25 know, I'm trying to have a -- this is a heartfelt to my

1 brother.

2 Q. Yes, ma'am. I understand. I just want to make sure that
3 we keep on track.

02:50 4 A. Anyway, you know, this is -- it's so consuming in the
5 mind, all that's -- all that's on the mind all the time. I
6 told my husband, I said, I hear him talking to me, but I don't
7 know what he's saying. I'm not listening because my mind is
8 thinking of the -- thinking about what's going on. I said I'm
9 driving, but I don't know for sure where I'm at because I'm
02:51 10 thinking about this all the time.

11 I said this has to be -- this is the hardest thing
12 that I've ever went through in my life. It's been an emotional
13 roller coaster. You know, some days seems like it's getting
14 better. Then there's days of sadness about how many people's
02:51 15 lives that this has affected.

16 Now I'm going to talk -- go over what Nxxxx -- when
17 -- we started caring for Nxxxx when she was 18 months old. Her
18 birth mom is one of my husband's daughters from his first
19 marriage. Nxxxx was the youngest of three children that she
02:51 20 asked us to take care of because she was going to jail. And
21 Nxxxx was a very affectionate and happy little girl. She was
22 always smiling. She was four when we started keeping a new
23 baby girl named Avery. That was our niece. Nxxxx loved Avery.
24 She -- and she was always happy to see Avery when she came home
02:52 25 from Head Start.

02:52 1 Then Nxxxx started to change a little bit when she
2 was about seven or eight. She didn't seem as happy anymore, so
3 I sent her back to live with her mom, and she didn't like
4 living how her mom's lifestyle was, so Nxxxx came back to live
5 with us again, and it was then when she really started to
6 change. She didn't seem happy anymore. She always seemed
7 angry at everybody. She was mean to Avery and was always
8 making her cry. She was no longer affectionate. She didn't
9 want anyone to hug her anymore. She didn't want to hug
02:52 10 anybody. She started -- she started talking back. She started
11 to stay in her room all the time with her door closed.

12 And when she was 11 she didn't want to go to school
13 anymore. She wanted to be home-schooled, so I home-schooled
14 her. Then she didn't -- then she wanted to move away. She
02:52 15 wanted to move to Arizona. We told her we didn't want to move
16 to Arizona, but maybe Bismarck. My husband didn't even want to
17 move to Bismarck. He didn't want to -- he didn't want to move
18 any place. I couldn't even talk to Nxxxx anymore without her
19 snapping at me and making me cry.

02:53 20 Then just about a week before we had heard about
21 this, before we found out that the FBI wanted to talk to us, I
22 was crying and I said to Nxxxx, "You've changed. I don't know
23 what happened to you, but you've changed. You make me feel
24 like you hate me." And once we found out what had happened,
02:53 25 all her actions made sense. She was hurting deeply, and she

1 was in pain.

2 when I asked if her godfather had done something to
3 her and she started crying and she turned away, you know, I
4 knew something happened. I held her, and we both cried. I
02:53 5 told her she was safe and that I was sorry for whatever had
6 happened to her.

7 And we took her to the Children's Advocacy Center and
8 Nxxxx got counseling, and she still -- she's still having
9 trouble with school, and she's still having trouble trying to
02:54 10 relate to girls her own age. And she said she always --- now
11 she feels a lot like -- she feels like a loner because she
12 feels she's been through something that nobody else her age has
13 been through.

14 There's -- there's no physical scars, but, you know,
02:54 15 how do we know when she's going to be emotionally healed?
16 Nxxxx -- Nxxxx has cried and said she has to live with this the
17 rest of her life, that she's never going to be able to forget
18 what happened to her. And I told her that maybe some day she
19 can speak to other children about not being afraid to come
02:54 20 forward if something like this ever happens to -- ever happens
21 to them. We have a strong faith in God, and I said he -- he
22 will help heal us. He'll help heal us.

23 And in conclusion, you know, I think one thing --
24 it's very unfortunate that I was directly involved in this
02:54 25 because I would have helped you, Lonnie. I would have helped

1 you. You know, I would have helped you do the right thing. I
2 would have helped, you know, right away. You know, there's
3 help for people that -- that this happens to. There's help for
4 people that do these things. I would have helped you to get --
02:55 5 try to get help. I wouldn't have helped you to try to deny it
6 or try to cover it up. I wouldn't have -- I would have told
7 you, Lonnie, you don't want to make those girls go to trial.
8 You don't want to put them through this again or their
9 families. You don't want to put your family through this. I
02:55 10 would have helped you. I would have told you those things, you
11 know, to do the right thing.

12 Unfortunately, I have to read this. It's unfortunate
13 that Lonnie listened to Sommer Cummings, Morley's girlfriend.
14 She gave him a false hope that she could help him beat this
02:55 15 charge. Lonnie might have been duped by her. She's like a
16 coyote in sheep's clothing. She may have just wanted Lonnie
17 out of the picture so he can't tell Morley what to do anymore.
18 She tried her best to cause a lot of trouble in our family time
19 and again, but everyone knows how she is.

02:56 20 Sommer didn't like the parents of any of the three
21 girls involved, so she was probably just trying to get back at
22 us through this -- making us go through all this trial and
23 everything. If Sommer really believed Lonnie was innocent,
24 then why wouldn't she let her ten-year-old be interviewed?

02:56 25 So, you know, I -- Lonnie, mom always taught us to do

02:56

1 the right thing, and I had to do the right thing. We had to do
2 the right thing for Nxxxx, for -- so that she can turn out to
3 be a healthy adult, you know, even though what she's been
4 through. But I don't hate you, but I do hate what we had to go
5 through.

6 MR. O'KONEK: Thank you.

7 THE COURT: Mr. Bolinske, do you have any questions?

8 MR. BOLINSKE: No questions.

02:56

9 THE COURT: All right. Thank you. Ma'am, you may
10 step down.

11 MR. O'KONEK: The United States doesn't have any
12 other witnesses, Your Honor.

02:57

13 THE COURT: All right. Then I will give both
14 attorneys an opportunity to outline their recommendations for a
15 sentence in this case. We'll start with the government. And
16 when the attorneys are done, Mr. Spotted Bear, I'll give you an
17 opportunity to speak, as I am required to do under the law.
18 Mr. O'Konek.

02:57

19 MR. O'KONEK: Thank you, Your Honor. As Your Honor
20 is well aware -- you were present during trial, so I won't
21 rehash a lot of the factual information, but our recommendation
22 is that this Court sentence the defendant to serve 360 months
23 imprisonment on Counts 1 through 4, to run concurrent with one
24 another, serve a lifetime term of supervised release, pay
25 restitution in the amount of \$1,795.76 to Medicaid, \$1,090 to

02:57

1 the North Dakota Crime Victims Compensation, for a total of
2 \$2,885.76, and pay the \$400 special assessment.

02:58 3 On September 14th of this year a jury found the
4 defendant guilty of Counts 1 through 4 of the Indictment for
5 molesting three girls between the ages of five and nine. The
6 defendant's crimes are unconscionable. However, the United
7 States takes into consideration that the defendant is 73 years
8 old. He -- the mandatory minimum of 30 years or 360 months is
9 a life sentence, and we don't believe that anything more than
02:58 10 the 30 years is necessary, and under the 3553(a) factors would
11 ask that the Court impose that mandatory minimum sentence on
12 all counts to essentially reflect the defendant's age.

13 The defendant did something horrific multiple times,
14 and ultimately he needs to pay and be accountable for the
02:58 15 actions that he committed, and we'd ask that the Court sentence
16 him to those 360 months on all counts and lifetime supervised
17 release. Thank you.

18 THE COURT: So the government is advocating a
19 variance from the guidelines.

02:59 20 MR. O'KONEK: Yes, Your Honor. The guideline range,
21 I believe, is 43, with a lifetime range. We believe that the
22 30-year sentence or the downward variance is -- the mandatory
23 minimum is sufficient but not greater than necessary under
24 3553(a).

02:59 25 THE COURT: And what were the plea negotiations

1 before trial?

2 MR. O'KONEK: Your Honor, I think it was 10- or
3 20-year maximum offense, with a two-year -- we'd recommend two
4 years if he didn't make the children go through the trial.

02:59

5 THE COURT: Mr. Bolinske.

6 MR. BOLINSKE: Yes, Your Honor. In this position,
7 nothing I can or will say --

8 THE COURT: Can you --

02:59

9 MR. BOLINSKE: -- has any legal significance or
10 consequence. Mr. Spotted Bear and Sommer Cummings and I did
11 have meetings many times about the minimum mandatory, about the
12 sentence offer, about the pros of the case, the cons of the
13 case, about all of those things, and ultimately decided to go
14 to trial.

03:00

15 That being said, that nothing I say legally will mean
16 anything. Lonnie and I talked about this. And what I will say
17 and what we've discussed is throughout this entire process,
18 Lonnie has been a perfect gentlemen. He's been respectful.
19 He's been considerate. He's been kind. He's been thoughtful.

03:00

20 That completely flies in the face, I know, of the things that
21 he's been convicted of.

03:00

22 I'm sorry that the whole process -- to everyone here,
23 I don't know what happened. I sort of wish I did in this
24 circumstance because it would either make it easier or harder.
25 I don't. I understand what the law is. I understand what

1 happened at trial, and I respect that, but knowing Lonnie and
2 what I've observed and been around, I've appreciated getting to
3 know him, and that's what I told him I was going to say, and I
4 mean that, so --

03:00

5 THE COURT: All right. Mr. Spotted Bear, I am
6 required to give you an opportunity to speak at this hearing.
7 If there's anything you wish to say or any questions that you
8 have, you're free to speak at this time.

03:01

9 THE DEFENDANT: No, Your Honor, I don't got nothing
10 to say, but -- no. No, nothing more.

03:02

11 THE COURT: All right. Well, I've reviewed the
12 Presentence Investigation Report. I accept the facts set forth
13 in that report, as well as the sentencing guideline
14 calculations. In this case the Presentence Report established
15 an offense level of 43 and a criminal history category of I.
16 Under the advisory sentencing guidelines, that provides for a
17 life sentence.

03:02

18 The government has moved for a downward departure
19 under -- well, they moved for a variance, I guess, based on the
20 sentencing factors set forth in 18 USC, Section 3553(a). I am
21 well aware of all of those sentencing factors. I have
22 sentenced thousands of defendants over the years, and I'm
23 required by the law to give those sentencing factors
24 consideration in every case, and I have given all of the
25 3553(a) factors consideration.

03:02

03:03 1 The Eighth Circuit Court of Appeals, which oversees
2 hearings that are conducted in a federal district court such as
3 this, has repeatedly instructed sentencing judges that we are
4 entitled to rely upon factual information contained in the
5 Presentence Report that may address the 3553(a) factors. We're
6 entitled to rely upon information contained in sentencing
7 memorandums, letters of support, arguments of counsel,
8 statements or lack of statements made by defendants. I'm also
9 entitled to rely upon my trial notes. All of those items and
03:03 10 pleadings and arguments and letters have addressed the 3553(a)
11 factors in this case.

12 The government has recommended a downward departure
13 to the 30-year mandatory minimum -- or a variance, I should
14 say, to that range, and the Court will adopt that
03:03 15 recommendation. There's a 30-year mandatory minimum on all of
16 these -- well, three of the counts, I guess, and not more than
17 life imprisonment on Count 4, the abusive sexual contact of a
18 child conviction.

19 It's hard for me to understand, Mr. Spotted Bear, why
03:04 20 anybody would turn down a plea agreement in which the
21 government recommended -- would recommend two years, your
22 attorney would have an opportunity to recommend anything below
23 that when you're looking at a case or charges that involve
24 30-year mandatory minimums. It's insane.

03:04 25 Maybe if you've got one victim that's testifying

03:05 1 against you in a trial involving a charge of aggravated sex
2 abuse, you got a 50/50 chance of prevailing in front of a jury.
3 when you got three victims, all of whom were good witnesses,
4 but three victims testifying against you, your odds go down
5 remarkably.

03:05 6 But I've had other defendants that have made the
7 ill-advised decisions to go to trial with multiple victims and
8 an opportunity to argue for a significantly lesser sentence.
9 They chose to do it, and every case involving charges of
10 aggravated sex abuse that I've tried, the juries aren't very
11 sympathetic towards defendants, and they tend to believe the
12 young victims who are forced to go to trial, but remarkably
13 hold up well under direct and cross-examination. I thought
14 these young ladies were very credible. The stories were very
03:05 15 consistent, and they were confirmed by forensic interviews.

03:06 16 Faced with that overwhelming evidence, to turn down a
17 two-year or less sentence is, again, insane, but it is what it
18 is. My hands are tied as a judge. You go to trial and you get
19 convicted on a charge of aggravated sex abuse, Congress has
03:06 20 decided that that offense carries a 30-year mandatory minimum,
21 so I have no discretion, none whatsoever. When people enter
22 plea agreements, then I usually have some discretion, but I
23 have none in this case. But the fact that this case went to
24 trial is a -- is a travesty for everybody because nobody wins
03:06 25 when these cases go to trial. Everybody loses. Families are

1 torn apart, and young kids' lives are destroyed forever.

2 So pursuant to the Sentencing Reform Act of 1984,
3 it's the judgment of the Court, Mr. Spotted Bear, that you
4 shall be committed to the custody of the Bureau of Prisons to
5 be imprisoned for a period of 360 months or 30 years, the
6 statutory mandatory minimum sentence. That sentence is imposed
7 on Counts 1, 2, 3 and 4. Count 4 carries a statutory maximum
8 of a life sentence, but I'm imposing the same 30-year sentence
9 on all four counts, to run concurrent.

10 I'm placing you on supervised release for a term of
11 life on all four counts, to run concurrent with one another.
12 I'm ordering that you pay a special assessment of \$400. I'm
13 ordering restitution in the amount of \$2,885.76. I am not
14 imposing any fine.

15 You do have a right to appeal, sir, if you feel that
16 you haven't been treated fairly. If you and/or your family
17 feel that the whole case was unjustly tried and you were
18 unjustly convicted, then you can take it up on appeal to the
19 Eighth Circuit Court of Appeals. You have a right to appeal
20 the decision of the jury, and you have a right to appeal the
21 sentence that you've been ordered to serve.

22 The time period to appeal, however, is extremely
23 short in the federal criminal justice system. The time period
24 to appeal is 14 days by statute. The 14 days to appeal starts
25 to run today, when I sign the judgment or the judgment of

03:08

1 conviction, and I'll be signing that before the end of the
2 workday. And when I sign it, it gets electronically filed, and
3 the attorneys are electronically notified of that. But it will
4 all take place before 5 o'clock today, and that's what triggers
5 the 14-day time period to appeal, as soon as I sign it and it's
6 docketed, so you need to move quickly if you wish to appeal.

03:09

7 All that you need is tell Mr. Bolinske that that's
8 what you intend to do, and he can very quickly and easily file
9 a one-page document called a notice of appeal, and that
10 protects your appeal rights. But that notice of appeal needs
11 to be filed within 14 days from today or you have lost your
12 right to appeal forever. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

03:09

14 THE COURT: All right. In terms of the appeal, most
15 of this case hinged, like nearly all of these cases, on issues
16 of credibility, who the jury believes, who they don't believe.
17 Those aren't decisions for judges to make. Those are decisions
18 for jury to -- juries to make. And the Circuit Courts of
19 Appeals around the country don't generally overturn jury
20 verdicts that were based on issues of jury credibility. The
21 appellate court judges don't judge the credibility of
22 witnesses. That's only for the jury to decide.

03:10

03:10

23 In terms of the other issues on appeal, everybody can
24 argue that the jury instructions were not appropriate or
25 somehow they were flawed. But my recollection is both parties

03:10

1 agreed on the jury verdict and the instructions. I just used
2 pattern, pre-approved, Eighth Circuit Court of Appeals
3 instructions, so if the Eighth Circuit Court of Appeals tells
4 me the instructions are appropriate, I never hesitate to give
5 them. And that's all that I really gave in this case, was
6 standardized, unobjected to pattern jury instructions.

03:11

7 And in terms of the sentence, everybody can appeal
8 the sentence, but if there's a conviction on aggravated sex
9 abuse or attempted aggravated sex abuse, there's a 30-year
10 mandatory minimum. There's no room for debate. There's nobody
11 that can question the appropriateness of the sentence, so you
12 can appeal, but you've got a thousand and one hurdles to
13 overcome on appeal.

03:11

14 And the best thing that could happen if you're
15 successful on appeal is they send it back and we try it again.
16 And we can try this case again, but you can run this scenario
17 by a number of juries, and you're going to get the same
18 consistent verdict, I believe, in virtually every case. Why do
19 I know that? Because I try a lot of these cases,
20 unfortunately.

03:11

21 Either counsel have any objections to the sentence
22 that's been imposed? I guess I've got to order the conditions
23 of supervision, so I'll outline those first of all.

03:12

24 In terms of the conditions of supervised release that
25 you'll be required to comply with, you'll be required to follow

03:12

1 the standard conditions of supervised release that are uniform
2 throughout this country. Those standard conditions essentially
3 require that you live a law-abiding lifestyle. You're
4 prohibited from possessing firearms or ammunition for the rest
5 of your life now. And you'll be assigned a probation officer
6 when and if you're released from prison.

7 Special conditions that I'm ordering are that you
8 shall have no contact with the victims in this case, directly
9 or indirectly, by any means whatsoever.

03:12

10 You'll be required to participate in any form of
11 psychological or psychiatric counseling and/or sex offender
12 treatment programming that might be recommended.

03:13

13 I'm ordering that you shall have no contact with
14 anyone under the age of 18 except in the presence of the parent
15 or legal guardian and on the condition that the parent or legal
16 guardian has been made aware of these convictions.

17 And last of all, while on supervised release, if that
18 occurs, you'll be subject to being searched, as is everybody in
19 this country on federal supervision.

03:13

20 Having ordered those conditions, does anyone have any
21 objections that they wish to voice on the record here to the
22 sentence or the conditions of supervised release?

23 MR. O'KONEK: No, Your Honor.

24 THE COURT: Mr. Bolinske?

03:13

25 MR. BOLINSKE: I have no objections, Your Honor.

1 THE COURT: All right. Do you have any questions,
2 Mr. Spotted Bear?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Where have you been held in custody now
5 since the trial?

6 THE DEFENDANT: I'm in Rugby.

7 THE COURT: Pardon?

8 THE DEFENDANT: Rugby.

9 THE COURT: All right. And have you been treated in
10 a respectful manner?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. And, finally, to the family
13 members and the victims that were involved in this, I hope that
14 you'll take advantage of the services that are made available
15 through the United States Attorney's victim advocate.

16 I want to convey my thanks to the victims for coming
17 forward. And it takes a lot of courage for anybody to testify
18 in a federal criminal case, but it probably takes more courage
19 for young people to do so, but hopefully they and their family
20 members can start to heal. But there are services available
21 through the U.S. Attorney's Office for counseling and other
22 care and treatment. I hope that you'll take advantage of those
23 services to hopefully start to mend.

24 With that, we are adjourned.

25 (Proceedings concluded at 3:15 p.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: January 22, 2018

/s/ Sandra E. Ehrmantraut
Certified Realtime Reporter